

Nicholas D. Chamberlain
ACOMS # 533397
Goose Creek Correctional Center
22301 West Alsop Road
Wasilla, Alaska 99623

FILED

MAY 24 2020
APPELLATE COURTS
OF THE
STATE OF ALASKA

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MAY 27 2020
APPELLATE COURTS
OF THE
STATE OF ALASKA

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

NICHOLAS D. CHAMBERLAIN,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Trial Court No. 3AN-19-04466CI

5/29/20
Court of Appeals No. A-13499

REFUSED FOR FILING

This file is closed.
See this court's 5/26/2020
order. You may file
an appeal of the
dismissal of your
first application for post-
conviction relief.

CC: N. Sime

Ryan Montgomery -
Sister
Chief Deputy Clerk

MOTION TO LIFT STAY AND RE-DETERMINE (SUA SPONTE)
WHAT NEEDS TO JUDICIALLY BE DONE WITH CHAMBERLAIN'S LITIGATION

On 12/12/2019, after Chamberlain filed his Opening Brief for this appeal, this Court issued a sua sponte order that stayed any further proceedings:

It is therefore ordered, sua sponte: Because this appeal is premature, it is **STAYED**, pending the final judgment in Mr. Chamberlain's first application for post-conviction relief. If Mr. Chamberlain prevails in his first application, this case will be closed. If Mr. Chamberlain does not prevail in his first application, this case will be remanded to the superior court for renewed consideration. Mr. Chamberlain's opening brief will be lodged until the stay is removed.

On May 14, 2020, in a single paragraph, the superior court denied Chamberlain's first application for post conviction relief. Exhibit 1. This Court's Stay Order of 12/12/2020 can now be lifted. However, Chamberlain requests the following facts be analyzed under the Court's sua sponte powers to re-determine the judicial course Chamberlain's litigation, as a whole, must take.

FACTS

- 1) On December 8, 2009, Chamberlain was arraigned by Judge Catherine M. Easter. [R. 426-429]. Judge Easter read the charges against Chamberlain and informed both Chamberlain and his Mother that while recognizing Chamberlain being 16 years of age, Chamberlain would automatically be waived into adult court due to Chamberlain's charges. [R. 427].
- 2) After informing Chamberlain of the charges and that a waiver into adult court was automatic, Judge Easter asked Chamberlain, "Sir, would you like an attorney to help you with this?" [R. 427].
- 3) Chamberlain responded to Judge Easter's question with an unequivocal, "No, ma'am." [R. 427].
- 4) Judge Easter immediately disregarded Chamberlain's answer by stating, "Your going to get an attorney." and proceeded to then asked Chamberlain's Mother about financial matter. [R. 427].
- 5) The actions of Judge Easter forcing Chamberlain to be represented by counsel violated Chamberlain's fundamental rights under both State and Federal Constitutions to self representation. [R. 121-124].
- 6) After 5 years of forced representation, Chamberlain filed an application for post-conviction relief alleging ineffective assistance of counsel. See 3AN-15-06398CI.


- 7) Chamberlain represented himself in the initial post-conviction proceedings until the State filed a motion for a representation hearing on July 31, 2015, to inquire of Chamberlain's understanding of his rights to the appointment of counsel in a first post-conviction proceeding.
- 8) Attorney Nicholas Polasky was ultimately appointed to represent Chamberlain's post-conviction relief interests. However, Mr. Polasky proved to be exceptionally ineffective. Mr. Polasky filed an Amended Application for Post-Conviction Relief that failed to meet the minimum requirements to establish a prima facie case for relief [R. 87-91]. Mr. Polasky's extreme incompetence cause Chamberlain to have to file a second "Grinols" claim application for post-conviction relief, during the pendency of his first application, against the ineffective representation Mr. Polasky was providing. [R. 6-473].
- 9) The Superior Court Order of May 14, 2020, that now dismisses Chamberlain's First Application for Post-Conviction Relief is fundamentally, as a matter of law, so deficient in making specific findings of facts and conclusions of law relating to each of Chamberlain's issues, a reversal upon appellate review is a foregone reasonable certainty that Chamberlain also believes the State will likely concede as well. Compare [R.347-352, 394-415] to Exhibit 1; See Alaska R. Crim. Proc. R. 35.1(g): "The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final

judgment.". See also the 3/16/2020 Entry of Appearance of Nancy R. Simel, a seasoned Assistant Attorney General who's reputation is beyond reproach.

CONCLUSION

Chamberlain's litigation is sufficiently, as a whole, before this Court for a determination and Order that would ensure Chamberlain's litigation is no longer able to evade a just resolution (over a decade now) because of incompetent representation and Superior Court Orders that are issued, as a matter of law, in Plain Error.

Respectfully submitted this 24th day of May 2020.



Nicholas D. Chamberlain

I certify that a copy of this
Motion was mailed to Nancy R. Simel
at her address of record on 5/26/2020.



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

NICHOLAS CHAMBERLAIN

Petitioner,

v.

STATE OF ALASKA

Respondent.

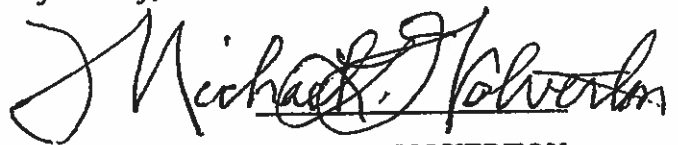
Case No. 3AN-15-06398CI

ORDER GRANTING MOTION TO DISMISS

On April 14, 2015, Nicholas Chamberlain filed an application for post-conviction relief alleging that his trial attorneys provided ineffective assistance of counsel by inadequately discussing the case and Rule 45 with him and by threatening him into a plea deal because they explained that if he were to proceed to trial, he would face 99 years in jail. An evidentiary hearing was held on 5/11/2020. To establish an ineffective assistance of counsel claim, the applicant must demonstrate that his attorneys' performances were deficient and that the deficient performance resulted in prejudice.¹ Chamberlain has not met those thresholds, and therefore,

IT IS HEREBY ORDERED that the application for post-conviction relief is DISMISSED.

DATED in Anchorage, Alaska this 14th day of May, 2020.



MICHAEL L. WOLVERTON
Superior Court Judge

I certify that on 5/14/20 a copy
of the above was mailed to each of the following at
their addresses of record:

1-Polasky 1-Agerter

¹ *Risher v. State*, 523 P.2d 421 (Alaska 1974).

EXHIBIT 1.